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12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15
16 OAKLAND DIVISION

17 In Re
18
19 PG&E CORPORATION
20
21 v.
22
23 AECOM TECHNICAL SERVICES, INC.

Case No. 4:20-cv-05381-HSG (Lead Case)

(Reference withdrawn from Bankruptcy
Case No. 19-30088, Adv. Proc. No. 20-
03019, and Adv. Proc. No. 19-03008)

(Consolidated with Case No. 3:20-cv-08463-
EMC)

**JH KELLY, LLC'S OPPOSITION TO
PACIFIC GAS AND ELECTRIC
COMPANY'S MOTION FOR
RULE 54(b) JUDGMENT AS TO
AECOM AND JH KELLY'S
MECHANIC'S LIEN CLAIMS**

Hearing Date: December 2, 2021
Hearing Time: 2:00 p.m.
Courtroom: 2, 4th Floor
Judge: Hon. Haywood S. Gilliam, Jr.

1 **I. INTRODUCTION**

2 JH Kelly, LLC (“Kelly”) opposes Pacific Gas & Electric Company’s (“PG&E”) motion
3 for entry of a final judgment under Federal Rule of Civil Procedure 54(b) (Dkt. No. 68) (the
4 “Motion”) on a single alternative remedial procedure invoked by Kelly and AECOM Technical
5 Services, Inc. (“AECOM”). PG&E moves for a final judgment because the Court granted its
6 Motion to Dismiss as to claims for foreclosure of mechanic’s liens filed by Kelly and AECOM,
7 even though the full merits of this construction dispute remain pending and are scheduled for trial
8 in February 2022. Binding precedent from the Ninth Circuit Court of Appeals makes clear that a
9 judgment under Rule 54(b) is inappropriate where, as here, entry of judgment would result only in
10 piecemeal appeals that do not bring this litigation closer to its conclusion, and the resolved claims
11 are factually intertwined with unresolved claims. In such circumstances, “the parties’ and judicial
12 resources would be better spent obtaining a final judgment on all of the claims, instead of
13 detouring to the court of appeals for a piecemeal resolution of but one sliver of the case.” *Jewel*
14 *v. Nat’l Sec. Agency*, 810 F.3d 622, 631 (9th Cir. 2015).

15 **II. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 54(b) provides:

17 When an action presents more than one claim for relief . . . or when multiple
18 parties are involved, the court may direct entry of a final judgment as to one or
19 more, but fewer than all, claims or parties only if the court expressly determines
that there is no just reason for delay.

20 Rule 54(b) also states that such an order “does not end the action as to any of the claims or
21 parties.” *Id.* The party seeking to obtain a Rule 54(b) judgment bears the burden of
22 demonstrating that it is warranted. *Foreman v. Bank of Am., N.A.*, No. 18-CV-01375-BLF, 2019
23 WL 8137145, at *2 (N.D. Cal. Dec. 3, 2019).

24 In assessing a motion under Rule 54(b), the Court “must first determine that it has
25 rendered a ‘final judgment.’” *Wood v. GCC Bend, LLC*, 422 F.3d 873, 878 (9th Cir. 2005)
26 (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980)). In this case, there is no
27 dispute that the Court’s order dismissing Kelly and AECOM’s mechanic’s lien claims is a “final
28 judgment” as to those claims. But the Court must still determine “whether there is any just reason

1 for delay.” *Id.* The Court is to make this determination ““in the interest of sound judicial
2 administration,”” *id.* (quoting *Curtiss-Wright*, 446 U.S. at 8), using a two-pronged analysis.

3 Under the first prong, the Court must “evaluat[e] . . . such factors as the interrelationship
4 of the claims so as to prevent piecemeal appeals in cases which should be reviewed only as single
5 units.” *Curtiss-Wright*, 446 U.S. at 10; *see also Jewel*, 810 F.3d at 628. “Whether a final
6 decision on a claim is ready for appeal is a different inquiry from the equities involved, for
7 consideration of judicial administrative interests ‘is necessary to assure that application of the
8 Rule effectively ‘preserves the historic federal policy against piecemeal appeals.’”” *Wood*, 422
9 F.3d at 878 (quoting *Curtiss-Wright*, 446 U.S. at 8).

10 To that end, the Ninth Circuit reviews a district court’s “‘juridical concerns’
11 determination” *de novo*, “first asking whether the certified order is sufficiently divisible from the
12 other claims such that the ‘case would [not] inevitably come back to this court on the same set of
13 facts.’” *Jewel*, 810 F.3d at 628 (quoting *Wood*, 422 F.3d at 879 (alteration in original)). Claims
14 that are not “completely distinct from the rest of the action” may only be subject to a Rule 54(b)
15 judgment “‘so long as resolving the claims would ‘streamline the ensuing litigation.’” *Id.*
16 (quoting *Noel v. Hall*, 568 F.3d 743, 747 (9th Cir. 2009)). A Rule 54(b) judgment is generally
17 inappropriate when the resolved claim has “inter-connected factual allegations” with unresolved
18 claims. *Id.* at 629–30.

19 In addition, a Rule 54(b) judgment is ordinarily appropriate only where the resolved
20 claims involve all parties or resolve all claims as to any party. *Id.* at 630 (citing *Spiegel v.*
21 *Trustees of Tufts Coll.*, 843 F.2d 38, 44 (1st Cir. 1988)). “It will be a rare case where Rule 54(b)
22 can appropriately be applied when the contestants on appeal remain, simultaneously, contestants
23 below.” *Spiegel*, 843 F.2d at 44 (quoted with approval by *Jewel*, 810 F.3d at 630). Where such
24 considerations are present, “the practical effect of certifying the . . . issues . . . is to
25 deconstruct . . . [the] action so as to allow piecemeal appeals with respect to the same set of
26 facts.” *Wood*, 422 F.3d at 880; *see also Jewel*, 810 F.3d at 630 (same).

1 Turning to the second prong, “once such juridical concerns have been met” (*Curtiss-*
2 *Wright*, 446 U.S. at 10), the Court conducts an “equitable analysis” under which it “determine[s]
3 the appropriate time when each final decision in a multiple claims action is ready for appeal.”
4 *Jewel*, 810 F.3d at 628 (internal quotation marks omitted) (quoting *Wood*, 422 F.3d at 878). With
5 respect to this prong, the resolution of a claim that is factually related to unresolved claims also
6 fails to satisfy the “no just reason for delay” requirement of Rule 54(b) because the Court of
7 Appeals’ “consideration of the single issue served up for interlocutory review is more likely to
8 cause additional delay than it is to ameliorate delay problems.” *Id.* at 630.

9 III. ARGUMENT

10 As noted, Kelly does not dispute that the Court’s order dismissing Kelly and AECOM’s
11 mechanic’s lien claims is a “final judgment” as to those claims. Accordingly, the analysis focuses
12 on the two-pronged determination on whether there is “no just reason for delay.” Here, there is
13 reason for delay. PG&E requests a Rule 54(b) judgment in precisely the circumstances the Ninth
14 Circuit has repeatedly held are inappropriate. Not only is trial close at hand, but the mechanic’s
15 lien claim is simply a remedial claim intertwined with the many remaining claims involving the
16 same construction project (the “Project”) and the same parties. Certifying the lien claim for
17 immediate appeal would not advance this litigation as required by Rule 54(b). It would do the
18 opposite, creating exactly the type of piecemeal appeals for claims dependent on the same set of
19 facts that the Supreme Court and the Ninth Circuit have rejected repeatedly.

20 In the end, PG&E cannot demonstrate that issuance of a Rule 54(b) judgment satisfies the
21 dispositive juridical concerns or that immediate judgment as to the mechanic’s lien claims is
22 appropriate under the equities of this case.

23 A. Juridical Concerns Render Entry of a Rule 54(b) Judgment Inappropriate Because 24 Doing So Would Result in Piecemeal Appeals Among the Same Parties of Factually Intertwined Claims and Would Not Advance This Litigation.

25 The juridical concerns that the Ninth Circuit and the Supreme Court have expressed are
26 paramount in determining whether a Rule 54(b) judgment is appropriate. These concerns weigh
27 against entering a partial judgment in this case. The dismissed mechanic’s lien claims are only
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1 one claim seeking one remedy among the “sprawling construction contract dispute” (Dkt. No. 56
2 at 7) between PG&E, AECOM, and Kelly, the merits of which remain pending before this Court
3 and will be tried in February 2022.

4 **1. Entry of a Rule 54(b) judgment as to the mechanic’s lien claims is**
5 **inappropriate because all parties on appeal to those claims remain parties in**
6 **this action.**

7 The Ninth Circuit has embraced the principle that “[i]t will be a rare case where Rule
8 54(b) can appropriately be applied when the contestants on appeal remain, simultaneously,
9 contestants below.” *Spiegel*, 843 F.2d at 44 (quoted with approval by *Jewel*, 810 F.3d at 630). In
10 *Jewel*, the Ninth Circuit concluded that the fact the appeal did not resolve all claims even as to
11 any single party was a juridical concern that weighed against entry of a Rule 54(b) judgment.
12 *Jewel*, 810 F.3d at 630. Relying on *Jewel* and *Spiegel*, courts in this District have denied
13 Rule 54(b) motions when the same party is simultaneously an appellate and a litigant below. *See*
14 *Iglesia Ni Cristo v. Cayabyab*, No. 18-CV-00561-BLF, 2020 WL 3833281, at *7 (N.D. Cal.,
15 July 8, 2020) (“The Ninth Circuit has recognized the complications that result from entry of a
16 Rule 54(b) judgment when the same party is simultaneously an appellant and a litigant below.”);
17 *see also Foreman*, 2019 WL 8137145, at *4 (same).

18 Here, the Court dismissed Kelly and AECOM’s mechanic’s lien claims, which go to
19 remedy, not the merits. As Kelly’s First Amended Complaint makes clear, the claim is based on
20 the same nonpayment of amounts owed to Kelly for materials and construction work on the
21 Project as Kelly’s other claims. (Dkt. No. 18 ¶¶ 50–56.) Numerous claims among the parties as
22 to the merits remain. Even though Kelly’s sole claim against PG&E was its mechanic’s lien
23 claim, Kelly and PG&E remain crucial and indispensable parties in a dispute with intertwined
24 claims between PG&E (as the owner of the Project), AECOM (as the prime contractor), and
25 Kelly (as a subcontractor).

26 Moreover, Kelly’s claims against AECOM, AECOM’s claims against Kelly, AECOM’s
27 claims against PG&E, and PG&E’s claims against AECOM all involve the same set of facts from
28 which the mechanic’s lien claims arose. As such, if the Court entered a Rule 54(b) judgment in

1 this case, the “contestants on appeal” would “remain, simultaneously, contestants below.”
2 *Spiegel*, 843 F.2d at 44. In the absence of some extraordinary urgency in seeking appellate
3 review of the mechanic’s lien claims, the Ninth Circuit has been clear that this fact by itself is
4 enough to preclude entry of a Rule 54(b) judgment. *Jewel*, 810 F.3d at 630.

5 PG&E attempts to skirt this issue by arguing that the dismissal of the mechanic’s lien
6 claims resolved all claims directly between Kelly and PG&E. (Motion at 9.) That argument,
7 however, ignores the reality of this litigation that all relevant parties—PG&E, Kelly, and
8 AECOM—remain deep in the central dispute about who is entitled to payments related to the
9 Project. The fact that Kelly’s remaining claims are against AECOM are inescapably intertwined
10 with AECOM’s claims against PG&E and PG&E’s counterclaims against AECOM establishes
11 that the “contestants on appeal” of the mechanic’s lien claims would “remain, simultaneously,
12 contestants below.” *Spiegel*, 843 F.2d at 44.

13 While PG&E may desire to expedite resolution of a portion of this case, a Rule 54(b)
14 judgment will not advance this litigation in part or in whole. As the Ninth Circuit observed in
15 *Jewel*, “[w]e are sympathetic to the Jewel plaintiffs’ desire to bring at least part of this case to a
16 close. But awaiting a decision on a single claim, which is not a linchpin claim either factually or
17 legally, does not advance this result.” 810 F.3d at 630. The situation is no different here. For this
18 reason, entry of a Rule 54(b) judgment is inappropriate in this matter.

19 **2. Entry of a Rule 54(b) judgment is also inappropriate because the mechanic’s**
20 **lien claims are factually interrelated with the remainder of the claims in this**
21 **dispute, and the result would be piecemeal appeals on the same set of facts.**

22 *Jewel* also highlights another juridical concern. If this Court issued a Rule 54(b) judgment
23 as to only the mechanic’s lien claims, the result would be exactly the type of “piecemeal appeals
24 with respect to the same set of facts.” *Id.* at 630 (quoting *Wood*, 422 F.3d at 880). Absent
25 exceptions that are not present here, Rule 54(b) certification is not appropriate in such
26 circumstances.

27 Like *Jewel*, all of Kelly’s claims, including its lien foreclosure claim, rely “on inter-
28 connected factual allegations,” *id.* at 629, as demonstrated by the fact that Kelly’s First Amended

1 Complaint contains a lengthy section devoted to factual allegations that are related to all counts
2 (Dkt. No. 18 ¶¶ 10–50). In *Jewel*, the Ninth Circuit concluded that under such circumstances, the
3 case ““would inevitably come back to this court on the same set of facts.”” *Id.* (quoting *Wood*,
4 422 F.3d at 879); *see also Wood*, 422 F.3d at 882 (“The greater the overlap the greater the chance
5 that this court will have to revisit the same facts—spun only slightly differently—in a successive
6 appeal.”).

7 The exceptions that justify Rule 54(b) certification in the face of piecemeal appeals on
8 intersecting facts are not present here. In *Wood*, the Ninth Circuit noted that there are some
9 circumstances in which claims with some overlapping facts may be separable for purposes of
10 Rule 54(b). For example, Rule 54(b) may be appropriate when “counterclaims are involved that
11 arise out of the same transaction or occurrence as the certified claim,” or when “the case is
12 complex and there is an important or controlling legal issue that cuts across (and cuts out or at
13 least curtails) a number of claims.” *Wood*, 422 F.3d at 881. These circumstances are not present
14 here: the remaining claims are not counterclaims to Kelly’s and AECOM’s lien claims (in fact,
15 the remaining claims soundly predominate over the resolved claims), and there is no “controlling
16 legal issue” that the Court resolved in dismissing the mechanic’s lien claims that cuts across or
17 curtails a number of claims. *Id.*

18 Courts in this District have reached a similar result in similar circumstances. In *Foreman*,
19 the plaintiffs brought claims against Bank of America (“BOA”) under various legal theories on
20 the basis that a fee that BOA charged in order to stop recurring fund transfers was unlawful. 2019
21 WL 8137145, at *1. One plaintiff brought an individual claim on the basis that he paid the stop-
22 payment fee, but BOA failed to honor the stop-payment order. *Id.* The court dismissed all the
23 collective claims (the “Dismissed Counts”) with prejudice but the individual claim survived. *Id.*
24 The plaintiffs moved for entry of a Rule 54(b) judgment as to the Dismissed Counts. *Id.*

25 Although the court concluded that the dismissal of the claims constituted a “final
26 judgment,” relying on *Jewel*, the court declined to enter a Rule 54(b) judgment. *Id.* at *4. The
27 court reasoned that (1) “the legal and factual issues underlying the Dismissed Counts overlap with
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1 the legal and factual issues of the pending claim”; (2) one party to the Dismissed Counts
2 remained involved in the active litigation; and (3) “because of the overlap in facts supporting the
3 Dismissed Counts and the pending claims, applying Rule 54(b) may lead to multiple appeals and
4 piecemeal litigation.” *Id.* at *3–*4; *see also Tsyn v. Wells Fargo Advisors, LLC*, No. 14-CV-
5 02552-LB, 2016 WL 7635883, at *3 (N.D. Cal. June 27, 2016) (denying a Rule 54(b) judgment
6 because the “dismissed FLSA claim and the still pending claims, ‘stem[] largely from the same
7 set of facts and would give rise to successive appeals that would turn largely on identical, and
8 interrelated, facts’” (alteration in original) (quoting *Jewel*, 810 F.3d at 630)); *Axis Reinsurance*
9 *Co. v. Telekenex, Inc.*, No. 12-2979 SC, 2013 WL 1789705, at *3 (N.D. Cal. Apr. 26, 2013)
10 (denying a 54(b) judgment where claims were factually intertwined, but legally distinct claims
11 remained).

12 The close factual relationship between the mechanic’s lien claims and the remainder of
13 this construction payment dispute renders entry of a Rule 54(b) judgment inappropriate.

14 **3. PG&E does not explain why entry of a Rule 54(b) judgment would not result**
15 **in piecemeal appeals when it remains a party and there are numerous related**
16 **claims remaining.**

17 PG&E makes little mention of the juridical concerns inherent in piecemeal appeals in its
18 motion even though they have been paramount to the Ninth Circuit’s and lower courts’
19 assessment of the appropriateness of a Rule 54(b) judgment. As a basis for a Rule 54(b)
20 judgment, PG&E makes passing reference to the fact that the mechanic’s lien claims present
21 discrete legal issues that the other claims do not. (Motion at 8–9.) But some discrete legal
22 consideration is *always* present where a court dismisses some but not all claims or one of multiple
23 parties.

24 Accepting PG&E’s argument would make a Rule 54(b) judgment appropriate whenever a
25 court partially grants any motion to dismiss or motion for summary judgment. That is
26 emphatically not the law. As *Wood* explained, “[i]t is also common for motions to be made for
27 summary judgment, and to be granted in part and denied in part as district judges trim and prune a
28 case to focus on what really is at issue for trial. At least in our experience, requesting—or

1 granting a request for—certification in ordinary situations such as this is not routine. We believe
2 it should not become so.” 422 F.3d at 879.

3 In any event, although the procedural basis on which the Court dismissed the mechanic’s
4 lien claims was unique to those claims,¹ the mechanic’s lien claims share other important
5 common elements with the other claims in this case; that is, of course, Kelly and AECOM could
6 only maintain a mechanic’s lien on the property to the extent that they demonstrated they are
7 entitled to payment related to the Project. Indeed, the relief related to the mechanic’s lien claims
8 (*i.e.*, perfection of the mechanic’s liens) is merely an alternative procedure for serving the same
9 purpose as much of the other relief sought in this case: recovery of amounts owed for
10 construction of the Project. The mechanic’s lien claims are not factually and legally distinct from
11 the remainder of the claims related to payment for construction on the Project.

12 PG&E tries a different spin on this argument when it contends that AECOM’s remaining
13 claims “are based on different facts and legal theories and seek separate relief.” (Motion at 9.)
14 While PG&E does not explain how the remaining claims are “based on different facts” (they, of
15 course, are not), all of AECOM’s and Kelly’s claims relate to payment for construction on the
16 Project. Slicing off the mechanic’s lien claims will do nothing to advance this case when the
17 claims are not essential and the numerous claims that remain are related to a common set of facts.

18 Entering a Rule 54(b) judgment in this case would result in piecemeal appeals of the
19 factually interconnected claims brought among PG&E, AECOM, and Kelly related to payment
20 for construction on the Project. The law is clear that a Rule 54(b) judgment is inappropriate in
21 such circumstances. Accordingly, the Court should deny PG&E’s Motion for entry of a
22 Rule 54(b) judgment as to AECOM and Kelly’s mechanic’s lien claims.

23 **B. PG&E Fails to Point to Any Other Basis to Find There Is No Just Reason to Delay**
24 **Entry of a Rule 54(b) Judgment.**

25 The juridical concerns above are dispositive. In any event, PG&E fails to point to any
26 reason why a piecemeal appeal of one claim in this complex dispute should proceed immediately.

27 ¹ Kelly preserves its objection to the Court’s ruling and its right to appeal that ruling at the
28 appropriate time.

1 The only argument that PG&E even attempts to muster on this point is its contention that the
2 encumbrance on the Burney Compressor Station property will remain in place until resolution of
3 all claims in this case. But PG&E does not articulate any real-world prejudice that will accrue if
4 appeal of the Court's dismissal of the mechanic's lien claims awaits final judgment. Indeed, it
5 cannot. PG&E waited *over two years* after Kelly recorded its mechanic's lien on November 1,
6 2018, to raise the validity of that lien despite ample opportunity to do so. (Dkt. No. 18 ¶ 54.)

7 Moreover, trial on the merits is just around the corner, beginning in February 2022. Thus
8 certification under Rule 54(b) will not expedite release of the encumbrances against PG&E's
9 property. Trial will conclude far earlier than any interlocutory appeal might conclude, and
10 satisfaction of any judgment or payment of any settlement would likely obviate Kelly's need to
11 maintain the lien regardless of its validity. PG&E also disregards that trial or other resolution
12 may moot the need for an appeal. *See SPS Techs., LLC v. Briles Aerospace, Inc.*, No. CV 18-
13 9536-MWF (ASX), 2020 WL 3050773, at *3 (C.D. Cal., Apr. 14, 2020) ("Because Plaintiff's
14 interlocutory appeal could very well be mooted, the Court determines that there is a just reason
15 for delay." (citing *Wood*, 422 F.3d at 882)); *see also Cont'l Airlines, Inc. v. Goodyear Tire &*
16 *Rubber Co.*, 819 F.2d 1519, 1525 (9th Cir. 1987) (noting that "Rule 54(b) certification is
17 ordinarily disfavored" when the resolved claims did not eliminate any party and an appeal thereof
18 may be mooted by subsequent proceedings, but nonetheless affirming entry of a Rule 54(b)
19 judgment because it "carv[ed] out threshold claims," "streamline[d] further litigation," and
20 "shortened any subsequent trial *by months*" (emphasis added)).

21 To be sure, an immediate appeal of the mechanic's lien claims would not expedite or
22 streamline the resolution of these proceedings. Such an immediate, piecemeal appeal would only
23 serve to open another battlefield in this "sprawling construction contract dispute." (Dkt. 56 at 7.)
24 And regardless of the outcome, an immediate appeal will not advance this litigation. Even if the
25 Ninth Circuit ruled today on the validity of Kelly and/or AECOM's mechanic's liens, this Court
26 must still address the numerous remaining claims regarding the parties' entitlements to payment
27 for construction on the Project.
28

1 Because a piecemeal appeal of the mechanic's lien claims will not advance this litigation,
2 it would only serve to delay and complicate the action and needlessly consume the Court of
3 Appeals' resources. The law is clear that entry of a Rule 54(b) judgment is inappropriate in such
4 circumstances.

5 **IV. CONCLUSION**

6 PG&E has failed to carry its burden to demonstrate that it is entitled to entry of a
7 Rule 54(b) judgment on the mechanic's lien claims raised by Kelly and AECOM. PG&E's
8 Motion should be denied in its entirety.

9 DATED: August 30, 2021

10 STOEL RIVES LLP

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